distinction between partial and general restraints of trade. *Mitchel v. Reynolds,* 1 P. Wm. 181. Partial restraints, those limited with respect to place, if reasonably necessary for the protection of the purchaser, were sustained. A further development of the rule in England saw the terms partial and general lose their territorial significance, and the adoption of the test, what is a reasonable restraint under all the circumstances of the case. *Nordenfelt v. Maxim Nordenfelt Co.,* 19 App. Cas. 535. The tendency of modern decisions is to adopt the rule of the *Nordenfelt* case. For a discussion of the two rules and a full citation of authorities, see 8 MICH. L. REV. 298 (article), 417; 9 MICH. L. REV. 68. The distinction between general and partial restraints is still adhered to in some jurisdictions, and in Georgia has received statutory declaration. In its application of this rule the court in the principal case attaches great significance to the omission of the contract to state a territorial limitation expressly and concludes that the contract is one in general restraint of trade. Such a conclusion need not necessarily follow. The problem in any case is essentially one of construction, *Rakestraw v. Lanier,* 104 Ga. 188, and it is at least arguable that the language of the contract in the principal case, when properly interpreted in the light of the circumstances surrounding the contracting parties, does impose a territorial limitation commensurate with the extent of the business sold. Relief was granted in the following cases where the problem was the same as that of the principal case and the language of the contracts more unfavorable to the plaintiff: *Hubbard v. Miller,* 27 Mich. 15 (not to engage in the business of well-driving); *Moore & Handley Hardware Co. v. Towers Hardware Co.,* 87 Ala. 206 (not to handle plow blades). See also *Warfield v. Booth,* 33 Md. 63; note to *Nicholson v. Ellis,* 24 L. R. A. (N. S.) 942.

COVENANT RUNNING WITH THE LAND—COVENANT AGAINST INCUMBRANCE. —By an Idaho statute, "grant," as used in any conveyance of an interest in land, implies a covenant against incumbrances created or suffered by the grantor to the grantee, his heirs and assigns. The complainant "granted" land on which there was a tax lien to one of the respondents, who gave back a mortgage on it in part payment. The grantee then conveyed to the other respondents, who were forced to discharge the tax lien to save the land. The first grantor sued to foreclose his mortgage, claiming that the interest had not been paid according to the agreement. The respondents contended that they were entitled to credit for the amount paid as taxes. *Held,* that the covenant against incumbrances ran with the land and that the respondents were entitled to credit for the amount that they had been forced to pay because of its breach. *Brinton v. Johnson et al.* (Idaho, 1922), 208 Pac. 1028. It was also *held,* in a suit following, that the remote grantee could recover from the grantor the amount of taxes paid. *Carssow v. Brinton* (Idaho, 1922), 208 Pac. 1031.

The court based its holdings on the fact that the Code had made choses in action assignable, and therefore the broken covenant could run with the land. It also declared that the express words of the statute—"to the grantee, his heirs and assigns"—covered the case. In the United States a covenant

against incumbrances is generally regarded as a covenant *in praesenti* broken, if at all, when made. *Ladd v. Noyes,* 137 Mass. 151; *Richard v. Bent,* 59 Ill. 38; *McPike v. Heaton,* 131 Cal. 109; *Hasselbusch v. Mohmking,* 76 N. J. L. 691. Consequently, in many states only the immediate grantee can recover for a breach of such covenant. *Ladd v. Noyes, supra; McPike v. Heaton, supra.* But in states allowing the assignment of a chose in action it has been held that a remote grantee may sue. *Geiszler v. DeGraaf,* 166 N. Y. 339 (departing from the earlier rule in the state); *Tucker v. McArthur,* 103 Ga. 409; *Schofield v. Iowa Homestead Co.,* 32 Iowa 317. The same result follows where there is a direct enactment that the chose in action shall go with the land. *Prescott v. Hobbs,* 30 Me. 345. Rawle suggests that even without the aid of statute the remote grantee should be able to sue as equitable assignee. RAWLE, COVENANTS, § 226. The English view is that the covenant, though nominally broken at the moment of its creation, has a continuing breach until actual damage has been suffered, and being primarily in the nature of an indemnity, runs with the land. *Kingdon v. Nottle,* 4 Maule and Selw. 53. A few American states have followed this rule. *Foote v. Burnet,* 10 Ohio 327; *Exrs. of McCrady ads. Brisbane,* 1 Nott. & McC. (S. C.) *104; *Coleman v. Lyman,* 42 Ind. 289; see also *Schofield v. Iowa Homestead Co., supra.* The English theory of continuing breach was severely criticised as being ingenious but of no substantial import, in *Mitchell v Warner,* 5 Conn. 497, and Chancellor Kent favored the chose in action theory which the principal case illustrates. 4 COM. 472.

CRIMES—ALLEGATION AND PROOF OF FORMAL MATTERS,—At a trial for murder the evidence tended to show that the homicide was committed "near West Green," a village near the boundary of the county in which the case was tried. On appeal by the defendant from conviction, *held,* that venue was not sufficiently proven to establish the jurisdiction of the county court. *Taylor v. State* (Georgia, 1922), 113 S. E. 147. In an Alabama case the defendant was indicted for the violation of a prohibition law that took effect January 25, 1919. The indictment failed to allege the date of the offense, or that it occurred subsequent to the statute which changed it from a misdemeanor to a felony. The refusal of the lower court to charge that it was therefore fatally defective, *held,* error. *Hammons v. State* (Ala. 1922), 92 So. 914.

Both Georgia and Alabama are code states. No authorities of date more recent than the code of procedure adopted in 1910 are cited by the Georgia court for its strict adherence to the common law rule requiring venue to be proved precisely as a material fact. Numerous late cases under the prohibition statute in Alabama, themselves based expressly on the Constitution of 1901, Section 7, which provided that "no person shall be punished but by virtue of a law established and promulgated prior to the offense and legally applied," are the authority for the decision of the court of that state in the principal case. But the ambiguity that was the basis of the earlier decisions did not exist in the record of the Alabama case, since the